

No. 11007

In the United States Circuit Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA, APPELLANT

v.

ONE PLYMOUTH TRUCK, 7 BOXES OF LEMONS 307 LBS.
GROSS, 2 BOXES GRAPEFRUIT 92 LBS. GROSS, 10 CASES
CANNED MILK, 48 CANS EACH, "PET" AND "CARNA-
TION" BRANDS, RESPONDENTS-APPELLEES

MIGUEL MORACHIS, CLAIMANT-APPELLEE

UPON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF ARIZONA

BRIEF OF APPELLANT

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BRIEF OF APPELLANT

JURISDICTION OF THE DISTRICT COURT

The District Court had jurisdiction of this proceeding under Section 24 (9) of the Judicial Code as amended (28 U. S. Code, Section 41 (9) as this is a suit or proceeding for the enforcement of forfeitures incurred under the laws of the United States (R. 2, 4, 10, 11, and 14). The laws of the United States involved are: Title VI of the Espionage Act of 1917, i. e., the Act of June 15, 1917, Chapter 30, 40 Stat.

223-225 as amended, 22 U. S. Code, Section 401-408 incl.; and the Export Control Law of 1940 as amended, i. e., Section 6 of the War Powers Act of July 2, 1940, Chapter 508 (54 Stat. 714), as amended by the Act of June 30, 1942, Chapter 461 (56 Stat. 463), as further amended by Act of July 1, 1944, Chapter 360, 58 Stat. 671; 50 App. U. S. C. § 701.

JURISDICTION OF THIS COURT

This is an appeal from a final decision in the District Court for the District of Arizona, and no direct review may be had in the Supreme Court under Section 238 of the Judicial Code (28 U. S. C. § 345). This Court therefore has jurisdiction of this appeal under Section 128 of the Judicial Code (28 U. S. C. § 225 (a)), as amended.

STATEMENT OF THE CASE

This case is a test case and is representative of a large number of similar cases, a few of which are in this circuit and many are in the Fifth Circuit. The question is directly presented for the first time to an appellate court for an authoritative determination.

This appeal is taken by the United States from the judgment of the United States District Court at Tucson, Arizona, entered on January 27, 1945, decreeing restoration of the Plymouth truck under seizure (by the Collector of Customs) and in the actual or constructive custody of the Court in a proceeding wherein appellant United States claimed forfeiture of the truck to the United States under Title VI of the Espionage Act, June 15, 1917, 40 Stat. 223-225 as amended (22 U. S. C. § 401-408).

The truck was seized by the United States Collector of Customs on June 3, 1944, at Nogales, Arizona, together with 7 boxes of lemons, 307 lbs. gross; 2 boxes grapefruit, 92 lbs. gross; and 10 cases of canned milk, 48 cans per case (R. 10, FF 1). The food and the truck were seized on the grounds that the food was about to be exported, shipped from, or taken out of the United States into Mexico in violation of law in that a license for such an exportation as required by the regulations of the Foreign Economic Administration (formerly Board of Economic Warfare¹) under the Export Control Act of 1940, as amended (50 App. U. S. C. § 701), had not been issued (R. 10), and on the further grounds that the truck contained articles about to be exported, shipped from, or taken out in violation of law, and that the truck was intended to be used for said exportation (R. 10). Within ten days after the said seizure a warrant for further detention of the property seized including the food and the truck was applied for on oath filed in the United States District Court for Arizona (See Appendix A, p. 50 this brief) and granted by the Court. (R. 10. See Appendix A, p. 52 this brief.) A libel of forfeiture was filed (See Appendix A, p. 53 this brief) by the United States against the cases of canned milk, and boxes of lemons and grapefruit, and the Plym-

¹ Executive Order 9361, July 15, 1943 (8 F. R. 9861), issued by the President pursuant to the Act of December 18, 1941, ch. 593, 55 Stat. 838, 50 App. U. S. C. 601, transferred powers and functions of Board of Economic Warfare to Office of Economic Warfare, and by Executive Order 9380 (8 F. R. 13081), September 25, 1943, the powers and functions of the Office of Economic Warfare were in turn transferred to the Foreign Economic Administration.

outh truck on June 10, 1944 (R. 2, 12, 14). No petition for restoration of the milk, lemons and grapefruit pursuant to Section 3 of Title VI of the Espionage Act, 22 U. S. C. § 403 was filed by owner or claimant (R. 11). The District Court found as a conclusion of law that the boxes and cases of food were subject to forfeiture to the United States because they were "about to be exported from the United States into the Republic of Mexico in violation of the Export Control Act of 1940 as amended" (R. 14), and ordered them forfeited to the United States in the judgment (R. 3).

Timely Petition for Restoration of the automobile however was filed by Miguel Morachis in the District Court for the District of Arizona claiming that he was the owner of said Plymouth truck, that said truck was not intended to be exported from the United States to the Republic of Mexico and requesting that said truck be restored to him (R. 10, 11.) The District Court held as a conclusion of law that the Plymouth truck was not about to be exported, shipped from, or taken out of the United States into the Republic of Mexico in violation of law and that Title VI of the Espionage Act of 1917 does not authorize forfeiture of the vehicle containing articles about to be unlawfully exported but only authorizes seizure and detention of the vehicle so used (R. 14), and ordered in its judgment of January 27, 1945 that the petition of Miguel Morachis for restoration of said Plymouth truck be granted (R. 3). The Court did not purport to act under the bonding provisions of Section 5 (22 U. S. C. § 405).

On February 7, 1945 execution of the order of restoration was stayed by the District Court pending the result of this appeal (R. 7). Also on February 7, 1945 the District Court allowed the appeal herein (R. 6), petition for allowance of which was filed by the appellant (R. 5) since the statute here involved (Sec. 5) provides that the proceedings shall conform as near as may be to the proceedings in admiralty, 22 U. S. C. § 405.

Because it was not sure whether or not Rule I of the Rules in Admiralty of this Court was applicable to this appeal, appellant also filed a timely notice of appeal (R. 5). Assignments of error were filed on February 1, 1945 and citation on appeal was issued on February 8, 1945 and filed with acknowledgment of service by proctor for appellee on February 12, 1945 (R. 9). An agreed statement of facts was entered into by proctors for both parties (R. 9, 15) and filed on March 6, 1945 (R. 15). Said agreed statement was designated by both parties as embracing all the record necessary for the consideration of this appeal (R. 18 and 19).

QUESTION INVOLVED

The only question involved is whether Title VI of the Espionage Act of 1917, 22 U. S. C. § 401-408 incl., in conjunction with the Export Control Law of 1940 as amended, i. e., Title 6 of the Act of July 2, 1940, Chapter 508, as amended by Act of June 30, 1942, Chapter 461, 56 Stat. 463,² 50 App. U. S. C.

² As further amended by Act of July 1, 1944, Chapter 360, 58 Stat. 671.

§ 701 and the orders and regulations issued thereunder, authorizes forfeiture of a vehicle seized thereunder if the vehicle is used to take out or attempt to take out articles that cannot lawfully be exported because no license as required by said export control orders, regulations and laws had been issued for such exportation. If it does the judgment below should be reversed and the automobile under seizure should be forfeited to the United States.

SPECIFICATION OF ASSIGNED ERRORS

Appellant's five assignments of error in substance relate to one principle error—to wit: that the Court erred in concluding that the Plymouth truck was not subject to forfeiture to the United States under Title VI of the Espionage Act of 1917. For that reason the following five assignments of error which appear on page 4 of the Record will be treated as one in the argument herein:

1. The Court erred in ordering restoration of the respondent, one Plymouth Truck pick-up automobile, 1940 model, to petitioner, Morachis.

2. The Court erred in failing to hold the aforesaid 1940 pick-up truck for forfeiture to the United States.

3. The Court erred in failing to order forfeiture of the aforesaid 1940 pick-up Plymouth truck to the United States.

4. The Court erred in holding that Title VI of the Act of June 15, 1917, Chapter 30, 40 Stat. 223, as amended did not provide forfeiture of the vehicle containing the lemons, grapefruit and canned milk under

the circumstances revealed in the findings of fact herein.

5. The Court erred in finding that the aforesaid 1940 pick-up Plymouth truck was not being taken out of the United States in violation of law within the meaning of Title VI of the Act of June 15, 1917, Chapter 30, 40 Stat. 223 as amended (46 U. S. C. § 401-408 incl.).

STATEMENT OF THE FACTS

The agreed statement as it relates to the facts covers only four pages of the record (R. 10-13 incl.) but for the court's convenience the substance of the facts appearing therein will be here set forth:

On June 3, 1944, at the Port of Nogales, Arizona, the Collector of Customs seized 7 boxes of lemons 307 lbs. gross, 2 boxes grapefruit 92 lbs. gross and 10 cases of canned milk 48 cans each, and 1 Plymouth Truck for forfeiture under the Export Control Act of 1940 as amended (R. 10) upon the grounds hereinabove set forth. (Statement of Case, p. 3 this brief. See also R. 10.)

At the time of the seizure, claimant-appellee Morachis had an office in Nogales, Arizona, where he was in the business of buying and selling produce and shipping it into Mexico (R. 11, FF 5). On June 3, 1944 the employees of claimant-appellee Morachis who were conducting his business in his absence arrived at the Customs station at Nogales, Arizona, with the Plymouth truck here involved containing the aforesaid lemons, grapefruit and canned milk and presented

to the Customs Inspector an Export Declaration declaring for export 3 crates of celery, 2 boxes of sweetpotatoes, 20 boxes of fresh bread and 10 cases of apples (R. 11, FF 6). Upon examination of the contents of the truck, the Inspector found concealed beneath the bread in separate bread cartons, 10 cases of canned milk which had not been declared and also discovered that the boxes labeled "apples" actually contained lemons and grapefruit (R. 11, FF 7) which also had not been declared (R. 13, FF 18). No license for the exportation of said milk, grapefruit and lemons as required by the regulations of the Foreign Economic Administration had been obtained (R. 13, F 19). The agreed statement on this appeal also adopts the following facts as found by the District Court:

16. When the truck, canned milk, lemons and grapefruit were seized the truck was going from the United States into Mexico and the contents of the truck were being shipped into Mexico (R. 13).

* * * * *

20. The aforesaid employees of Morachis, who were conducting his business with his consent in his absence, used the aforesaid Plymouth Truck with the intention of, and as a means of, exporting or taking out of the United States and into Mexico the aforesaid lemons, grapefruit, and canned milk without having declared said lemons, grapefruit, and canned milk (R. 13).

* * * * *

14. The 1940 Plymouth Truck here proceeded against was used by Morachis and his

aforesaid employees at Nogales, Arizona, in their produce business (R. 13).

* * * * *

12. That said Plymouth Truck was used in this instance in an attempt to carry articles out of the United States without the required export license (R. 12).

* * * * *

8. That one of the employees arriving with the truck as aforesaid, one Rodolpho Tapia, shipping clerk and secretary of said Miguel Morachis, was in complete charge of the business of said Morachis. He was in charge of making purchases and the exportation back and forth. Morachis just checked the bills every month or so (R. 12).

9. That the said employees of Miguel Morachis were instructed by Rodolpho Tapia to attempt the smuggling and that said Tapia admitted that he had no license to export the said milk, grapefruit or lemons and had attempted to smuggle the produce across the border (R. 12).

10. That the said undeclared, concealed and falsely declared milk, grapefruit and lemons were, at the time of seizure, about to be exported from or taken out of the United States in violation of law and without a special license therefor having been issued by the Foreign Economic Administration (R. 12).

11. That the said Plymouth Truck, registered under the laws of Arizona, was in constant daily use between Nogales, Mexico, and Nogales, Arizona, for a period of about two years prior to the date of seizure, shipping produce from the United States into Mexico (R. 12).

The appellant asserts the Plymouth Truck is made subject to forfeiture by Title VI of the Espionage Act of 1917 as amended, 22 U. S. C. § 401-408 incl., since no license was obtained for the exportation of the canned milk, lemons and grapefruit as required by regulations and orders issued under the Export Control Act of 1940 as amended, 50 App. U. S. C. § 701. The Government, of course, does not question that portion of the judgment which forfeited to the United States the canned milk, lemons and grapefruit.

STATUTES AND REGULATIONS

Title VI, Espionage Act of 1917, act of June 15, 1917, chapter 30, 40 Stat. 223-225, as amended by the act of March 1, 1929, chapter 420, 45 Stat. 1423

SEIZURE OF ARMS AND OTHER ARTICLES INTENDED FOR EXPORT

SECTION 1. Whenever an attempt is made to export or ship from or take out of the United States any arms or munitions of war, or other articles, in violation of law, or whenever there shall be known or probable cause to believe that any such arms or munitions of war, or other articles, are being or are intended to be exported, or shipped from, or taken out of the United States, in violation of law, the several collectors, comptrollers of customs, surveyors, inspectors of customs, and marshals, and deputy marshals of the United States, and every other person duly authorized for the purpose by the President, may seize and detain any articles or munitions of war about to be exported or shipped from, or taken out of the United States, in violation of law, and the vessels or

vehicles containing the same, and retain possession thereof until released or disposed of as hereinafter directed. If upon due inquiry as hereinafter provided, the property seized shall appear to have been about to be so unlawfully exported, shipped from, or taken out of the United States, the same shall be forfeited to the United States (40 Stat. 223-4; cf. Title 22, U. S. C. § 401).

SEC. 2. It shall be the duty of the person making any seizure under this title to apply, with due diligence, to the judge of the district court of the United States, or to the judge of the United States district court of the Canal Zone, or to the judge of a court of first instance in the Philippine Islands, having jurisdiction over the place within which the seizure is made, for a warrant to justify the further detention of the property so seized, which warrant shall be granted only on oath or affirmation showing that there is known or probable cause to believe that the property seized is being or is intended to be exported or shipped from or taken out of the United States in violation of law; and if the judge refuses to issue the warrant, or application therefor is not made by the person making the seizure within a reasonable time, not exceeding ten days after the seizure, the property shall forthwith be restored to the owner or person from whom seized. If the judge is satisfied that the seizure was justified under the provisions of this title, and issues his warrant accordingly, then the property shall be detained by the person seizing it until the President, who is hereby expressly authorized so to do, orders it to be restored to the owner or claimant, or until it is dis-

charged in due course of law on petition of the claimant, or on trial of condemnation proceedings, as hereinafter provided (40 Stat. 224; cf. Title 22, U. S. C. § 402).

SEC. 3. The owner or claimant of any property seized under this title may, at any time before condemnation proceedings have been instituted, as hereinafter provided, file his petition for its restoration in the district court of the United States, or the district court of the Canal Zone, or the court of first instance in the Philippine Islands, having jurisdiction over the place in which the seizure was made, whereupon the court shall advance the cause for hearing and determination with all possible dispatch, and, after causing notice to be given to the United States attorney for the district and to the person making the seizure, shall proceed to hear and decide whether the property seized shall be restored to the petitioner or forfeited to the United States (40 Stat. 224; cf. Title 22 U. S. C. § 403).

SEC. 4. Whenever the person making any seizure under this title (sections 238 to 245, inclusive, of chapter 5, title 22 United States Code) applies for and obtains a warrant for the detention of the property, and (a) upon the hearing and determination of the petition of the owner or claimant restoration is denied, or (b) the owner or claimant fails to file a petition for restoration within thirty days after the seizure, the United States attorney for the district wherein it was seized, upon direction of the Attorney General, shall institute libel proceedings in the United States district court or the district court of the Canal Zone or the

court of first instance of the Philippine Islands having jurisdiction over the place wherein the seizure was made against the property for condemnation; and if, after trial and hearing of the issues involved, the property is condemned, it shall be disposed of by sale, and the proceeds thereof, less the legal costs and charges, paid into the Treasury: *Provided*, That the court shall order any arms and munitions of war so condemned delivered to the War Department of the United States. (As amended by Act of March 1, 1929, Chapter 420, 45 Stat. 1423; cf. Title 22, U. S. C. § 404.)

SEC. 5. The proceedings in such summary trials upon the petition of the owner or claimant of the property seized, as well as in the libel cases herein provided for, shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in such libel cases, and all such proceedings shall be at the suit of and in the name of the United States: *Provided*, That upon the payment of the costs and legal expenses of both the summary trials and the libel proceedings herein provided for, and the execution and delivery of a good and sufficient bond in an amount double the value of the property seized, conditioned that it will not be exported or used or employed contrary to the provisions of this title, the court, in its discretion, may direct that it be delivered to the owners thereof or to the claimants thereof (40 Stat. 224-5; cf. 22 U. S. C. Sec. 405).

SEC. 6. Except in those cases in which the exportation of arms and munitions of war or other articles is forbidden by proclamation or otherwise by the Pres-

ident, as provided in section one of this title, nothing herein contained shall be construed to extend to, or interfere with any trade in such commodities, conducted with any foreign port or place wheresoever, or with any other trade which might have been lawfully carried on before the passage of this title, under the law of nations, or under the treaties or conventions entered into by the United States, or under the laws thereof (40 Stat. 225; cf. Title 22 U. S. C. § 406).

SEC. 7. Upon payment of the costs and legal expenses incurred in any such summary trial for possession or libel proceedings, the President is hereby authorized, in his discretion, to order the release and restoration to the owner or claimant, as the case may be, of any property seized or condemned under the provisions of this title (40 Stat. 225; cf. Title 22, U. S. C. § 407).

SEC. 8. The President may employ such part of the land or naval forces of the United States as he may deem necessary to carry out the purposes of this title (40 Stat. 225, cf. 22 U. S. C. § 408).

Export control law of 1940, section 6 of War Powers Act of July 2, 1940, chapter 508 (54 Stat. 714), as amended by act of June 30, 1942, ch. 461; (56 Stat. 463), as further amended by act of July 1, 1944, chapter 360, 58 Stat. 671, 50 App. U. S. C. § 701

SEC. 6 (a). The President is hereby authorized to prohibit or curtail the exportation of any articles, technical data, materials, or supplies, except under such rules and regulations as he shall prescribe.

(b) Unless the President shall otherwise direct, the functions and duties of the President under this sec-

tion shall be performed by the Foreign Economic Administration.

(c) In case of the violation of any provision of any proclamation, rule, or regulation issued hereunder, such violator or violators, upon conviction, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or by both such fine and imprisonment.

(d) The authority granted by this section shall terminate on June 30, 1945, or upon any prior date which the Congress by concurrent resolution, or the President, may designate; except that as to offenses committed, or rights or liabilities incurred prior to such date, the provisions of this section and such rules, regulations, and proclamations shall be treated as remaining in effect for the purpose of sustaining any suit, action, or prosecution with respect to such right, liability, or offense (Title 50, App. U. S. C. § 701).

Revised export control regulations of the Board of Economic Warfare, Vol. 8, Fed. Register, p. 1494, as amended by Amendment 143 (Foreign Economic Administration), effective on January 29, 1944, Vol. 9, Fed. Register, pp. 833, 834.

§ 801.2. *Prohibited Exportations*.—The exportation from the United States of all the commodities hereafter enumerated in this section and all technical data as defined in § 806.1 of this subchapter to all destinations except Canada (including that part of Labrador under Canadian authority) is hereby prohibited unless and until a license authorizing such exportation shall have been issued by the Office of Exports:

(Fruits—canned, dried, and fresh are included, pp. 1513, 1514; milk and cream, condensed, evaporated, dried and fresh are specifically included under “Dairy products” p. 1509; “General License Group—None” for all these commodities is provided in Amendment 143, Vol. 9, Fed. Register, pp. 833, 834.)

ARGUMENT

POINT I

The statute clearly authorizes seizure of the vehicle containing articles about to be exported in violation of law

The forfeiture to the United States is claimed herein under Title VI of the Espionage Act of 1917 approved June 15, 1917 as amended, 22 U. S. C. § 401–408 incl. The purpose of that Title was to provide effective civil punishment for illegal traffic in the exportation of arms, munitions of war and other articles or produce deemed necessary by the President to our wartime or domestic economy. Consonant with similar enforcement statutes the statute provided for seizure of the vehicle being used in the unlawful exportation.

Section 1 of Title VI of the Espionage Act of 1917 (22 U. S. C. § 401) provides in part as follows:

Whenever an attempt is made to export * * * or take out of the United States any arms or munitions of war, *or other articles*, in violation of law * * * (40 Stat. 223, 22 U. S. C. § 401). [Italics by counsel.] See full text pp. 10–11, this brief.)

Clearly the described contingency existed in this case in view of the admittedly unlicensed character of the food products which it was attempted to export.

Said section after stating the above condition and adding an alternative condition where only “probable cause” exists provides that the Collectors, inspectors of customs, etc.

may seize and detain any articles * * *
 about to be exported * * * from * * *
 the United States, in violation of law, *and the*
 * * * *vehicles containing the same,* * * *
 (40 Stat. 224, 22 U. S. C. § 401). [Italics by
 counsel.]

This statutory provision leaves it unquestioned that the seizure in this case was authorized and justified in view of the agreed statement of facts indicating that the boxes and cases of food were about to be exported in violation of law.

Section 1 then provides that the seizing authorities may “retain possession thereof until released or disposed of as hereinafter directed, * * *.” This clause providing for retention or possession “thereof” clearly applies to both the vehicles and the articles seized and hence not only is the seizure of the truck here involved clearly within the statute but its retention in the possession of the seizing officer is clearly provided for.

POINT II

When read together the several provisions of the act show that Congress intended that a vehicle taken out of the country in violation of law, i. e., transporting, exporting, or taking out articles illegally, shall be forfeited to the United States

The agreed statement of fact states that there was an admitted attempt to “smuggle the produce across

the border” (R. 12, FF 9); that the Plymouth truck was used in this instance in an attempt to carry articles out of the United States without the required export license (R. 12, FF 12); that the truck was used with the intention of, and as a means of, exporting or taking out of the United States and into Mexico the food here involved without declaring same and without a license for same (R. 13, FF 20, 16, 18, 19); and that at the time of the seizure the milk, grapefruit, and lemons were about to be exported from or taken out of the United States in violation of law, and without a license having been issued (R. 12, FF 10).

As stated in Point I of this brief, Section 1 of Title VI of the Espionage Act (22 U. S. C. § 401) provides clearly for seizure of the vehicle containing such articles or produce and for its retention until released or disposal of “as hereinafter directed.” Immediately thereafter the same section provides:

If upon due inquiry as hereinafter provided, the property seized shall appear to have been about to be so unlawfully exported, shipped from, or taken out the United States, the same shall be forfeited to the United States (40 Stat. 224, 22 U. S. C., § 401).

Here for the first time the word *property* is used. In the previous clauses which must be closely scrutinized there are three groups of things or property dealt with: (1) arms or munitions of war, (2) other articles, and (3) vessels or vehicles containing the same.

For convenience in analysis we reprint here the provisions of Section 1 (40 Stat. 223-4, 22 U. S. C., § 401) :

SECTION 1. Whenever an attempt is made to export or ship from or take out of the United States, *any arms or munitions of war, or other articles*, in violation of law, or whenever there shall be known or probable cause to believe that any such *arms or munitions of war, or other articles*, are being or are intended to be exported, or shipped from, or taken out of the United States, in violation of law, the several collectors, naval officers, surveyors, inspectors of customs, and marshals, and deputy marshals of the United States, and every other person duly authorized for the purpose by the President, may seize and detain *any articles or munitions* of war about to be exported or shipped from, or taken out of the United States, in violation of law, *and the vessels or vehicles containing the same*, and retain possession thereof until released or disposed of as hereinafter directed. If upon due inquiry as hereinafter provided, *the property seized* shall appear to have been about to be so unlawfully exported, shipped from, or taken out of the United States, the same shall be forfeited to the United States (40 Stat. 223-4, 22 U. S. C. § 401).
[Italics by counsel.]

The use of the words "the property seized" in the last sentence is significant when compared with the language previously used. In the first part of the section setting forth the conditions under which seizure may be had, reference is made to "arms or

munitions of war” on the one hand and “other articles” on the other hand. In the middle clause defining what may be seized and detained, reference is made to “any articles” and to “munitions of war” and to “vehicles or vessels containing the same.” But in the last sentence of the section providing for substantive forfeiture the all inclusive words “the property seized” is used for the first time. Thus the vehicles seized as well as the articles seized are to be forfeited.

Section 2 (40 Stat. 224, 22 U. S. C. § 402) makes it the duty of the seizing officer to apply for a warrant for further detention. This clearly applies to the vehicle as well as to the property. For convenience in scrutiny the section is here reproduced in full:

SEC. 2. It shall be the duty of the person making *any seizure* under this title to apply, with due diligence, to the judge of the district court of the United States, or to the judge of the United States district court of the Canal Zone, or to the judge of a court of first instance in the Philippine Islands, having jurisdiction over the place within which the seizure is made, for a warrant to justify the further detention *of the property so seized*, which warrant shall be granted only on oath or affirmation showing that there is known or probable cause to believe that *the property seized* is being or is intended to be exported or shipped from or taken out of the United States in violation of law; and if the judge refuses to issue the warrant, or application therefor is not made by the person making the seizure within a reasonable time, not exceeding ten days after the seizure, the

property shall forthwith be restored to the owner or person from whom seized. If the judge is satisfied that *the seizure* was justified under the provisions of this title and issues his warrant accordingly, then *the property* shall be detained by the person seizing *it* until the President, who is hereby expressly authorized so to do, orders *it* to be restored to the owner or claimant, or until *it* is discharged in due course of law on petition of the claimant, or on trial of condemnation proceedings, as hereinafter provided (40 Stat. 224, 22 U. S. C. § 402). [Italics by counsel.]

Here again the section clearly refers to “any seizure” and the Judge if satisfied that “the seizure” was justified and issues his warrant accordingly, “then *the property* shall be detained.” If return of the vehicle were intended, here there should have been a provision for it. But instead further detention is authorized if the seizure was justified. Point I of this brief demonstrates that seizure of the vehicle was justified.

Section 3 (40 Stat. 224, 22 U. S. C. § 403) provides in part as follows:

The owner or claimant of *any property seized* * * * may at any time before condemnation proceedings have been instituted, * * * file his petition for its restoration * * * whereupon the Court * * * shall proceed to hear and decide whether *the property seized* shall be restored to the petitioner or forfeited to the United States (40 Stat. 224, 22 U. S. C. § 403). [Italics by counsel.]

Thus the provisions of both Section 2 and 3 envisage the continued possession in the seizing officer of all or any of the three classes of *things* or *property* referred to in the various clauses of Section 1, i. e.; (1) arms or munitions of war, (2) other articles, and (3) the vehicles containing same, up until after condemnation proceedings are commenced or until the hearing on petition for restoration.

Section 3 provides for a summary hearing on the question of whether *the property seized* shall be forfeited or restored. No substantive test as to whether or not the vehicle or the commodities shall be forfeited appears in either Section 2 or 3, nor is there any indication of the time when such vehicle is to be restored. But it is reasonable to suppose that if Section 2 and 3 did not contemplate that the vehicles were to be continued in the possession of the seizing officer and in the constructive custody of the Court the words "the property seized" would not be continued to be used but reference rather would be made to "arms or munitions of war or other articles" as is done in the first clauses of Section 1 and also in Section 6. This would seem to follow from the sole use in Section 1 of the words "the property seized" to refer to all three classes of *things* or *property* mentioned in Section 1.

Section 4 (45 Stat. 1423-4, 22 U. S. C. § 404) provides in part as follows:

Whenever the person making *any seizure*
under this title * * * obtains a warrant
for the detention of *the property* * * * the
United States attorney * * * for the dis-

trict *wherein it was* seized, * * * shall institute libel proceedings in the United States District Court * * * wherein the seizure was made, *against the property* for condemnation; and if after the trial or hearing of the issues involved, *the property* is condemned, it shall be disposed of by sale, * * * (45 Stat. 1423-4, 22 U. S. C. § 404). [Italics by counsel.]

Section 4 continues to refer to “the property” and “any seizure,” and indicates that libels of forfeiture *and decrees of condemnation against the vehicle* containing the arms, munitions or other articles are envisaged by the Act.

Analysis of section 5 (40 Stat. 224-5, 22 U. S. C. § 405) reveals a similar result:

The proceedings in such summary trials upon the petition of the owner or claimant of *the property seized*, as well as in the libel case herein provided for, shall conform, * * * to the proceedings in admiralty, * * * *Provided*, That upon the payment of the costs and legal expenses of both the summary trials and the libel proceedings herein provided for, and the execution and delivery of a good and sufficient bond in an amount double the value of *the property seized*, conditioned that it will not be exported *or used or employed* contrary to the provisions of this title, the court, in its discretion, may direct that *it* be delivered to the owners thereof or to the claimants thereof (40 Stat. 224-5, 22 U. S. C. § 405). [Italics by counsel.]

Here again the use of the all inclusive words “the property seized” instead of “arms and munitions or

other articles” is significant. It clearly indicates that up until, during and after either a summary trial (on petition for restoration of the claimant) or the plenary trial (in libel proceedings) the vehicle containing the arms or munitions or other articles still are expected to be in the possession of the seizing officer and in the constructive possession of the court.

Furthermore this section indicates that the vehicle is included in the bonding procedure by the use of the words “conditioned that it will not be exported or used or employed contrary to the provisions of this title.” The use of the words “or used or employed” appear to refer to the vehicle’s transporting the commodities, because the other provisions of title VI do not purport to make illegal *the use or employment* of arms or munitions or other articles in any way, but specifically make illegal *their exportation*. The ordinary and obvious meaning of the words “used or employed” in this situation would be applicable only to the vehicle used in the exportation.

It should be noted that the proviso begins by setting up the condition that the costs and expenses of the summary trial and the libel proceedings must be paid before the bonding will release “the property seized.” Here again the use of this language indicates that it was envisaged that the vehicles might still be under seizure and detention during and after both types of trials or hearings have been had and that such trials might result in condemnation of the vehicle as well as the arms, munitions or other articles. Otherwise there would be no necessity for its release upon bond nor for the condition that it not

be used or employed contrary to the provisions of the title.

Here again we find the provision that upon bonding in the Court's discretion "it," which refers back to "the property seized," be delivered to the owner or claimant. (The lower court did not purport to release the Plymouth truck under bond pursuant to Sec. 5.)

The vehicle containing the forbidden munitions or articles also appears to be included within the scope of Section 7 (40 Stat. 225; 22 U. S. C. § 407) which provides in part as follows:

Upon payment of the costs and legal expenses incurred in any such summary trial for possession or libel proceedings, the President, is hereby authorized, * * * to order * * * restoration * * * of *any property seized or condemned* under the provisions of this title. (40 Stat. 225; 22 U. S. C. § 407 [Italics by counsel])

Here again the use of the words "any property seized" would seem to include the vehicle seized. Otherwise the section could have employed the phrase as did Section 1 and 6: "arms and munitions of war or other articles." Also the first clause by providing: "Upon payment of the costs and legal expenses incurred in any such summary trial for possession or libel proceedings" indicates that it was envisaged that there might be a trial and libel proceedings involving the vehicles as included in "any property seized."

That the words "the property" was not being used in these sections as synonymous with "arms, muni-

tions of war or other articles” is demonstrated by the language of Section 6 (See text pp. 13-14 this brief.) Section 6 (40 Stat. 225, 22 U. S. C. § 406) significantly reverts to the use of the words “arms and munitions of war” on the one hand and “or other articles” on the other hand and does not use the word “property.”

We therefore conclude that in the last sentence in Section 1, 22 U. S. C. § 401 the words “the property seized” was purposely used to include the vehicle and that it was intended that the vehicle containing the forbidden arms or articles together with the arms and munitions of war or other articles should be forfeited to the United States.

None of the above provisions sets a time or defines the circumstances under which the vehicle seized while containing forbidden exports shall be restored by the Court unconditionally to the owner, although as Point I of this brief demonstrates, their seizure is clearly provided by statute.

Section 2 (22 U. S. C. § 402) authorizes restoration of the property by the President. It provides that if the judge is—

satisfied that the seizure was justified * * * *the property* shall be detained by the person seizing it until the President, who is hereby expressly authorized so to do, orders it to be restored to the owner or claimant, or until it is discharged in due course of law upon petition of the claimant, or upon trial of condemnation proceedings as hereinafter provided. [Italics by counsel.] (40 Stat. 224; 22 U. S. C. § 402.)

Restoration by the President on certain conditions *in his discretion* is specifically provided by Sec. 7:

Upon payment of the costs and legal expenses incurred in any such summary trial * * * the President is hereby authorized *in his discretion*, to order the release and restoration to the owner or claimant as the case may be of any property seized or condemned under the provisions of this title." [Italics by counsel.] (See text p. 21 this brief, 40 Stat. 225; 22 U. S. C. § 407.)

Here is an appropriate provision and here appear the circumstances under which the return of such vehicle is authorized. The language is logically applicable to the circumstances. But as emphasized above the language here envisages the fact that the vehicle would still be in the possession of the Court during and after the summary trial and libel proceedings.

Restoration *by the Court* of the vehicle containing illegal exports appears to be specifically authorized *under the conditions* set forth in Section 5 (quoted just above p. 23 this brief.)

Section 5 (40 Stat. 224; 22 U. S. C. § 405) provides that the proceedings shall conform as near as may be to the proceedings in admiralty, and then adds the proviso that the property seized may be delivered to the owners or claimants, upon execution of a bond in an amount double the value of *the property seized* "conditioned that it will not be exported or used or employed contrary to the provisions of this title * * *."

Here is the only provision, outside of Section 7 and the clause in Section 2, expressly authorizing the President to order restoration of the property seized, setting forth the time and circumstances under which the vessel which is being used to transport illegal exports may be restored by the Court to the owner, i. e., the court in its discretion may in proper circumstances order the release of the property seized on bond. This provision would seem appropriate as applied to the vehicle especially in view of the language of the statutory condition to be contained in the bond, namely "that it will not be exported, or used, or employed contrary to the provisions of this title." But the Court did not purport to release on bond.

Thus not only is no time or set of circumstances set forth in the statute specifically for return of the vehicle containing the illegal merchandise, but the language of the various sections indicate such vehicle is to be held and forfeited together with the merchandise, where the latter is subject to forfeiture.

POINT III

There would be no necessity or useful purpose in providing for seizure and detention of the vehicle, which provision is clearly contained in the sections 1 and 2 of the title here involved, were forfeiture of the vehicle not also contemplated

A. Seizure and search authorized anyway

It is well established that it is the duty of investigative or prosecuting officers to seize any property connected with the crime and preserve it for use at the trial. The Court in *United States of America v. 21*

lbs. 8 oz. Platinum, 147 Fed. (2) 78 (C. C. A. 4) stated as follows:

* * * it was their duty as prosecuting officers to seize any property connected with the crime and preserve it for use at the trial (p. 82).

In *Agnello v. United States*, 269 U. S. 20, the U. S. Supreme Court stated at page 30 as follows:

The right without a search warrant contemporaneously to search persons lawfully arrested while committing crime and to search the place where the arrest is made in order to find *and seize things connected with the crime as its fruits or as the means by which it was committed*, as well as weapons and other things to effect an escape from custody, is not to be doubted. See *Carroll v. United States*, 267 U. S. 132, 158; *Weeks v. United States*, 232 U. S. 383, 392. [Italics by counsel.] (p. 30)

Any violation of the Export Control Law of 1940 is a crime. 50 App. U. S. C. 701 (c). See text page 15, this brief.

In *Carroll v. U. S.*, 267 U. S. 132, the Court at p. 153 said:

Having thus established that contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant, we come now to consider under what circumstances such search may be made. It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor and thus subject all persons lawfully

using the highways to the inconvenience and indignity of such a search. *Travellers may be so stopped in crossing an international boundary because of national self protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in* (pp. 153-4). [Italics by counsel.]

Once the merchandise such as the canned milk, lemons and grapefruit here involved is seized and taken into the custody of the collector of customs there would be no point in providing further detention of the automobile if the whole act envisaged the restoration of the automobile to the claimant.

B. Further detention useless if no forfeiture of vehicle envisaged

In fact, in fairness to the owner-claimant, *if the vehicle were not subject to forfeiture*, the vehicle should not be subject to detention beyond the time required to remove from the vehicle the prohibited articles. Hence all the elaborate machinery for the obtaining of a warrant for further detention, the petition for restoration, the filing of a libel, the filing of an answer to the libel, the summary and plenary trials, the filing of a petition addressed to the President, which as demonstrated in Point II above are applicable to the vehicle as well as to the arms and munitions of war or other articles, would be meaningless and vain proceedings, were the ultimate event to be that the vehicle should be restored to the claimant.

It is to be presumed that Congress would not provide for a vain and useless thing. A contention for an interpretation of other language in the same sec-

tion which also would call for seizure and detention plus restoration of property seized was repudiated by the Circuit Court of Appeals for the 4th Circuit in the case of *United States v. 21 lbs. 8 ozs. more or less of Platinum*, 147 Fed. (2) 78, as follows:

We think that a literal interpretation of the statute is not permissible, for it leads to a result that Congress could not have intended. Under a literal interpretation a warrant for detention could never be issued and a condemnation of forfeiture could never be decreed. The statute contemplates first a seizure under § 401 and next, an application for a warrant of detention under § 402. Where a seizure has taken place, the goods are safely in the custody of a government agent and the possibility of an illegal exportation is at an end; so that it cannot be said that the property is then being exported or intended to be exported in violation of law, and it would be impossible to accompany the application for a warrant of detention with an affidavit showing an intention at the time to export the goods.

Furthermore, a forfeiture could not be had under a literal construction because the issuance of the warrant is the first step to be taken in a proceeding for condemnation, and § 402 says that if the judge refuses the warrant, the property shall be forthwith restored to the owner (p. 83).

Thus we conclude forfeiture of the vehicle containing the forbidden merchandise was intended, as otherwise the statutory provision for seizure, detention, and retention in custody would be unnecessary and would serve no useful purpose.

POINT IV

The judicial, executive, and legislative branches of the Government have treated the statute since its passage in 1917 as including forfeiture of the vehicles containing the articles whose exportation is unlawful

A. Judicial

The question here involved has never been authoritatively discussed by an appellate court. However there have been a number of judicial inferences that the vehicles containing the commodities whose exportation was forbidden are subject to forfeiture under the statute on that ground alone.

In *United States v. 251 Ladies' Dresses and One 1941 Ford Truck*, 53 F. Supp. 772 (District Court S. D. Texas, Brownsville Div., August 6, 1943), the Court ordered forfeiture of the truck under seizure on the sole grounds that it was "being used in the transportation of said merchandise from Laredo to El Fronton Ranch at the time of seizure" (p. 772). It was stipulated that later the goods were to be smuggled into Mexico without a license. No discussion appears in the opinion on the specific point but apparently all parties assumed that the truck was subject to forfeiture and that the truck, together with the ladies' dresses, were forfeited, the Court's opinion concluding as follows:

From what has been said, it follows that the two hundred and fifty-one (251) Ladies' Rayon "Synthetic" Dresses and the truck in which same were being transported should have been seized and should now be forfeited in this suit to the United States of America (pp. 774-775).

In *United States v. 267 Twenty Dollar Gold Pieces*, 255 F. 217 (District Court, W. D. Wash., January 23, 1919) in considering *separate* libels for forfeiture under the Espionage Act against one McLaughlin automobile and 267 Twenty Dollar Gold Pieces based on the same set of facts, the Court and counsel made no point at all that the automobile was not subject to forfeiture under the Act, though this question was squarely before the Court since a separate libel was filed against the automobile. The allegation against the automobile in support of its forfeiture was that *by the use of said automobile claimant* "did wilfully and feloniously attempt to export out of the United States at the port of Blaine, Washington, into the Province of British Columbia, gold pieces, coin of the United States, without having first made application to a Federal Reserve Bank in violation of the Espionage Act" (p. 218). Exceptions filed on other grounds were sustained.

See also forfeiture decree (App. C. p. 63 this brief) entered Jan. 27, 1919 in District Court for Arizona in *United States v. One Vim Auto-Truck* (unreported). This case was not called to the attention of the District Court.

In addition during the last four years decrees of forfeiture have been entered by various district courts against automobiles on the sole ground that they were being used in carrying out of the country commodities the exportation of which was unlawful. The following list will identify 17 such specific cases in various district courts which are unreported and wherein decrees of forfeiture of the automobile or truck containing illegal exports have been entered where the

violations were similar to that involved in this case. This is not an exhaustive list.

1. *United States v. 11 Robbins Automobile Tire Tubes, One Cadillac Sedan, et al.* Civil No. 547. Southern District of California. May 7, 1945.
2. *United States v. One 10 Ply Goodrich Silvertown Tire, One 1936 Ford Sedan, etc.* Civil No. 250, Tucson. District of Arizona. November 6, 1944.
3. *United States v. 10 Cases of Arsenate of Lead and One Chevrolet Truck.* Civil No. 204. Western District of Texas, El Paso Division. December 5, 1942.
4. *United States v. One Chevrolet Sedan and 65 Used Rubber Tires.* Civil No. 328. Southern District of Texas, Brownsville Division. May 19, 1945.
5. *United States v. One Diamond "T" Truck and One Lot of Ammunition.* Civil No. 305. Southern District of Texas, Brownsville Division. May 19, 1945.
6. *United States v. One 1936 Dodge Sedan and 7 Used Tires.* Civil No. 310. Southern District of Texas, Brownsville Division. May 19, 1945.
7. *United States v. One Lot of Ammunition and One Chevrolet Sedan.* Civil No. 304. Southern District of Texas, Brownsville Division. May 19, 1945.
8. *United States v. One Truck and One Lot of Miscellaneous Merchandise.* Civil No. 314. Southern District of Texas, Brownsville Division. May 19, 1945.

9. *United States v. One Hundred Gross Buttons and One Pontiac Coupe Automobile.* Civil No. 20. Western District of Texas, Del Rio Division. November 30, 1943.
10. *United States v. One Lot of Automobile Parts and One 1936 Ford Coupe.* Civil No. 147. Southern District of Texas, Laredo Division, March 4, 1944.
11. *United States v. One Lot of Automobile Parts and One 1930 Ford Roadster.* Civil No. 146. Southern District of Texas, Laredo Division. March 4, 1944.
12. *United States v. One Ford Coupe Automobile and One Lot of Automobile Parts.* Civil No. 130. Southern District of Texas, Laredo Division. April 13, 1944.
13. *United States v. One Chevrolet Pick-up Truck and Certain Electrical Equipment and Wearing Apparel.* Civil No. 135. Southern District of Texas, Laredo Division. March 4, 1944.
14. *United States v. One Plymouth Automobile and Fourteen Rolls Copper-Coated Steel Tubing.* Civil No. 124. Southern District of Texas, Laredo Division. June 9, 1944.
15. *United States v. One Plymouth Sedan.* Civil No. 343. Western District of Texas, El Paso Division, June 19, 1944.
16. *United States v. 18 gallons of Flavored Syrup and One 1935 Ford Truck.* Civil No. 213. Southern District of Texas, Brownsville Division. June 18, 1943.
17. *United States v. One Case of Lard, 32 pieces of Silverware and One Chevrolet Truck.* Civil

No. 205. Western District of Texas, El Paso Division. December 5, 1942.

Here are a number of judicial indications that the automobile carrying the illegal exports is to be forfeited.

B. Administrative

A long standing administrative interpretation supports the interpretation that the vehicle is subject to forfeiture. This administrative interpretation is evidenced by the fact already referred to above that in 1919 libel of forfeiture was filed against the automobile carrying the illegal export in the case just discussed, *United States v. 267 Twenty Dollar Gold Pieces*, 255 F. 217 (District Court, W. D. Wash., January 23, 1919). The court there was considering a libel for forfeiture under the Espionage Act against one McLaughlin automobile and also a libel for forfeiture of 267 Twenty Dollar Gold Piece. As already has been pointed out the only allegation asserted against the automobile in support of its forfeiture was that *by the use of said automobile* claimant "did wilfully and feloniously attempt to export * * * gold pieces, etc." (Opinion, p. 218.) See also decree of forfeiture against the automobile entered Jan. 27, 1919 in District Court for Arizona, *U. S. v. One Vim Auto-Truck*, p. 63 this brief, App. C.

Since the statute provides that the libel proceedings shall be instituted "upon direction of the Attorney General," 45 Stat. 1423-4, 22 U. S. C. § 404, the cases just referred to are direct evidence of the fact that the administrative interpretation of the

statute in the years shortly after its passage in 1917 was that the vehicle was subject to forfeiture.

Also the administrative interpretation is directly evidenced by the opinion in *United States v. 251 Ladies Dresses and One 1941 Ford Truck*, 53 F. Supp. 772 (S. D. Texas, Brownsville Div., Aug. 6, 1943) discussed above where the truck under seizure was "being used in the transportation of said merchandise from Laredo to El Fronton Ranch at the time of seizure" (p. 773). Here again the libel presumably was filed in accordance with the statutory requirement "upon direction of the Attorney General." 22 U. S. C. § 404. Incidentally it was the Attorney General who drafted the Espionage Act of 1917 and had the President submit it to Congress (see vols. 54 and 55, Congressional Record).

Again after the Export Control Law of 1940 became the occasion of numerous forfeitures incurred under Title VI of the Espionage Act it is clear that the executive interpretation of the Espionage Act was that the vehicle containing the unlawful commodities was subject to forfeiture proceedings, as is evidenced by the large number of forfeiture libels and decrees against automobiles containing illegal commodities which have been filed in the last four years under Title VI of the Espionage Act of 1917, as listed above under subpoint A, this point (pp. 33-36 incl.). These libels also were not to be filed except "upon direction of the Attorney General."

Such long standing administrative interpretation is evidence of the proper interpretation of the statute.

The Supreme Court of the United States stated the rule as follows in *Edward's Lessee v. Darby*, 25 U. S. (12 Wheaton) 206:

In the construction of a doubtful and ambiguous law, the contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect (p. 210).

The rule as stated by Sutherland on Statutory Construction (3rd Ed.—Horack) is as follows:

Long-continued contemporaneous and practical interpretation of a statute by the executive officers charged with its administration and enforcement, the courts, and the public constitutes an invaluable aid in determining the meaning of a doubtful statute" (Section 5103, Vol. 2, p. 512).

See also *United States v. Hill*, 120 U. S. 169.

C. Legislative

Congress passed two statutes popularly known as the Neutrality Act of 1935, and the Neutrality Act of 1937, in each of which it apparently assumed that the vehicle was subject to forfeiture by reason of Title VI of the Espionage Act of 1917. The arms and vehicles containing them were made subject to Title VI of the Espionage Act, and the language used implies that forfeiture of the vehicle by reason of Title VI was assumed by Congress.

The 1935 Act, Senate Joint Resolution No. 173, approved August 31, 1935, Chapter 837, 49 Stat. 1081, full text of Section 1 of which is set forth in Appendix B, p. 58 this brief, provided in part as follows:

Whoever, in violation of any of the provisions of this section, shall export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from the United States, or any of its possessions, shall be fined not more than \$10,000 or imprisoned not more than five years, or both, and the property, vessel, or vehicle containing the same shall be subject to the provisions of section 1 to 8 inclusive, title 6, chapter 30 of the Act approved June 15, 1917 (40 Stat. 223-225; U. S. C., Title 22, secs. 238-245).

In the case of the forfeiture of any arms, ammunition, or implements of war by reason of a violation of this Act, no public or private sale shall be required; but such arms, ammunition, or implements of war shall be delivered to the Secretary of War for such use or disposal thereof as shall be approved by the President of the United States (49 Stat. 1081).³ [Italics by counsel.]

Analysis of the language used indicates that the Congress when it passed this Act believed that the vessels or vehicles containing the prohibited commodities are subject to forfeiture under the 1917 Act. The second paragraph by the use of the words "in the case of" indicates two categories of forfeiture under the previous paragraph:

1. Of arms, ammunition or implements of war, and
2. The vessel or vehicle containing the same.

It provides in the case of forfeiture of the first category for delivery to the War Department. Since this

³ Repealed by House Joint Res. 306, approved Nov. 4, 1939, chapter 2, Section 19, 54 Stat. 12.

particular statute covers only arms, ammunition or implements of war, the second paragraph need only have read "*any property* (or article) forfeited by reason of a violation of this Act shall be delivered to the Secretary of War" unless it envisaged forfeiture also of the vehicle containing the forbidden exports by the provision that they shall be subject to Title VI of the Espionage Act of 1917.

Similarly the Act of 1937, Senate Joint Resolution 51, approved May 1, 1937, Chapter 146, 50 Stat. 121, full text of section 1 of which appears in Appendix B, p. 60 this brief, provides in part as follows:

(e) Whoever, in violation of any of the provisions of this Act shall export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from the United States shall be fined not more than \$10,000, or imprisoned not more than five years or both, and the property, vessel, or vehicle containing the same shall be subject to the provisions of sections 1 to 8, inclusive, title 6, chapter 30, of the Act approved June 15, 1917 (40 Stat. 223-225; U. S. C. 1934 ed., title 22 secs. 238-245).

(f) *In the case of the forfeiture of any arms, ammunition, or implements of war by reason of a violation of this Act, no public or private sale shall be required; but such arms, ammunition, or implements of war shall be delivered to the Secretary of War for such use or disposal thereof as shall be approved by the President*

of the United States (50 Stat. 122⁴). [Italics by counsel.]

Here again Congress indicated its belief that forfeiture of the vehicle containing the forbidden articles is provided under Title VI of the Espionage Act by specifying in subsection (f) that "In the case of the forfeiture of any arms, ammunition or implements of war by reason of a violation of this act, * * * such arms, ammunitions or implements of war shall be delivered * * *." This language seems clearly to imply other forfeitures were available under the Neutrality Act by reason of their being made subject to Title VI of the Espionage Act of 1917. Such other forfeitures under the language of this Neutrality Act could only be the vehicle containing the arms, etc. And as to such vehicle, subsection (e) *supra* provides only that it "shall be subject to Sections 1 to 8, inclusive, Title 6," Espionage Act of 1917.

As has been demonstrated in Point III of this brief there would be no point in providing that the vehicles should be subject to Title VI of the Espionage Act if the only purpose was to authorize their seizure and detention, as such provision would be unnecessary and serve no useful purpose.

It thus appears that ever since the passage of the Act of 1917 the executive, legislative, and judicial branches have assumed that the automobile containing

⁴ Repealed by House Joint Res. 306, approved Nov. 4, 1939, Chapter 2, Section 19, 54 Stat. 12.

the articles, as well as the forbidden articles, is subject to forfeiture.

POINT V

This is a remedial statute. It was drafted during our neutrality crisis and passed in wartime to be applicable to wartime violations, as well as to other emergency situations such as neutrality crises. Rule of strict construction inapplicable

The rule of strict construction does not require affirmance of the lower court's judgment.

The Espionage Act became law on June 15, 1917. Title VI of the Act was reported to the 64th Congress as Senate No. 6811, Feb. 8, 1917 (54 Cong. Rec. 2819). The Act declaring war with Germany was approved April 6, 1917 (40 Stat. 1).

A. Strict construction not required

This court stated in *United States v. Monstad, et al.*, 134 F. 2d 986:

Strictness of construction should not defeat the real objective of the statute (p. 988).

In that case the question was whether or not a penalty provision was applicable to fishing and gambling barges anchored off the California coast within the meaning of the statute forbidding the navigating of seagoing barges without a certificate of inspection from the Government steamboat inspectors.

In discussing the very section of the Espionage Act now under consideration, the 4th C. C. A. in the case of *United States v. 21 lbs. 8 ozs. Platinum*, 147 F. (2d) 78 declined to apply the rule of strict interpretation (at p. 83) in the following language:

We think that a literal interpretation of the statute is not permissible, for it leads to a result that Congress could not have intended. Under a literal interpretation a warrant for detention could never be issued and a condemnation of forfeiture could never be decreed.

* * * * *

Furthermore, a forfeiture could not be had under a literal construction because the issuance of the warrant is the first step to be taken in a proceeding for condemnation, and § 402 says that if the judge refuses the warrant, the property shall be forthwith restored to the owner.

We must look therefore for a more reasonable interpretation, * * *

* * * * *

There is no legal difficulty in giving this meaning to the statute for it is established that a thing may be within the letter of the statute and yet not within the statute because not within the spirit or legislative intent. "The reason of the law in such cases should prevail over its letter". *Holy Trinity Church v. United States*, 143 U. S. 457; *State of Maine v. United States*, D. C. Me., 45 F. Supp. 35, aff., 134 F. 2d 574; *United States v. Monstad*, 9 Cir., 134 F. 2d 986.

Moreover, it is well established that "statutes to prevent frauds upon the revenue are considered as enacted for the public good and to suppress a public wrong, and, therefore, although they impose penalties or forfeitures, not to be construed, like penal laws generally, strictly in favor of the defendant; but they are

to be fairly and reasonably construed so as to carry out the intention of the legislature.” *United States v. Stowell*, 133 U. S. 1, 12. See also, *Johnson v. Southern Pacific Co.*, 196 U. S. 1, 17; *United States v. A. Graf Distilling Co.*, 208 U. S. 199, 205–6; *United States v. Ryan*, 284 U. S. 167, 172. For like reasons, the Espionage Act of June 15, 1917, which was enacted for equally important public purposes, should be construed in a fair and reasonable manner (pp. 83–84).

B. National Defense and Wartime Legislation

In any case, where legislation is enacted for expedition of the national defense, the rule of strict construction of penal or forfeiture statutes should fall beneath the compelling necessities of a nation preparing for, or actually at, war. Sutherland on Statutory Construction (3rd Edition—Horack—1943), Section 7216, pp. 446–7 states:

It is imperative that legislation providing for national defense and the prosecution of war shall be liberally construed to accomplish its important objectives.

* * * * *

In time of war criminal statutes pertaining to national defense and the unimpaired conduct of the war should not be given the strict construction which is ordinarily applied to penal statutes; and it has not been uncommon for the courts to recognize that a statute may have a different meaning in time of war than it does have in time of peace.

It has also been held that statutes for the prevention of fraud, for the suppression of a probable wrong, or to effect a public good are not in a strict sense penal, although they impose a penalty. *Taylor v. United States*, 44 U. S. (3 Howard) 197, 210. In that case the Court's language is revealing:

The judge was therefore strictly accurate, when he stated that "It must not be understood that every law which imposes a penalty is, therefore, legally speaking, a penal law, that is, a law which is to be construed with great strictness in favor of the defendant. Laws enacted for the prevention of fraud, for the suppression of a public wrong, or to effect a public good, are not, in the strict sense, penal acts, although they may inflict a penalty for violating them." And he added, "It is in this light I view the revenue laws, and I would construe them so as most effectually to accomplish the intention of the legislature in passing them." The same distinction will be found recognized in the elementary writers, as, for example, in Blackstone's Commentaries (1 Black. Comm., 88), and Bacon's Abridgment (statute I 7, 8), and Comyns' Digest (Parliament R. 13, R. 19, R. 20), and it is also abundantly supported by the authorities (p. 210-211).

C. The policy and spirit of the law indicates the vehicle should be subject to forfeiture

The legislative history of the Espionage Act of 1917 in the 64th and 65th Congresses, shows that Congress

intended to fortify the Government with strong economic as well as political weapons in time of war and emergencies such as the neutrality crisis preceding our entry into the war. While there is no clear expression in the debates and reports as to the precise point here involved, the policy in enforcement statutes of forfeiting vehicles or vessels used for the commission of illegal acts is well established. There are cogent reasons for the application of the same policy where vital war or defense materials may make their way out of this country and possibly into unfriendly hands, or where our political policy of neutrality or aid to a belligerent might be indirectly compromised by such forbidden exports.

The reasons why forfeiture of the vehicle carrying the illegal commodity is recognized to be an important enforcement adjunct in statutes involving importation, exportation and transportation are several. The real culprits involved are hard to catch. They work through "fences," so that the real operators are not present at the time of the seizure. Frequently they are not resident in the United States and hence cannot be apprehended nor investigated readily. The vehicle used always appears to belong to someone other than those actually caught in the act. Frequently the commodities seized at the time of the discovery are not of large value although they constitute only one portion of a continuing scheme of exportation or importation in small quantities. The subterfuge appearing in the instant case is a typical example. Some of the food was in bread cartons covered up with bread and

some was labeled "apples" and was so declared. Actually it consisted of canned milk, grapefruit and lemons, the exportation of which was unlawful. It can well be imagined that many similar attempt by this or other groups are likely to be successful because undiscovered. The relatively large amount of smuggling which is attempted at the Mexican border might well be considered a matter of judicial notice. It is illustrated by the large number of cases similar to the one here involved which have arisen in the Texas districts. (See list of only a fraction pp. 33-36 this brief.) An example of the type of operation engaged in on the Mexican border is set forth in detail in the opinion in the *United States v. 251 Ladies Dresses*, 53 Fed Supp. 772, an excerpt of which is set out below in footnote.⁵

⁵"It is agreed that at the time that Claimant Fortunato Ramirez purchased said dresses in Laredo, they were intended to be exported to Mexico.

"It is agreed that at the time the dresses were seized by the officers, the same were being transported from Laredo, in Webb County, Texas, to El Fronton Ranch, in Starr County, where the claimant resides, and the goods were to be taken to his home, to be stored, to be later taken from said El Fronton Ranch to Monterrey, Mexico, and that the goods were seized at or about one o'clock p. m. on a road leading from the highway from Roma to Laredo to the El Fronton Ranch and a short distance from the claimant's home.

"It is agreed that claimant Rafael Ramirez is the owner of the truck sought to be forfeited and that such truck was being used in the transportation of said merchandise from Laredo to El Fronton Ranch at the time of seizure.

"The foregoing stipulation is hereby entered into by and between the attorneys of record for the United States of America

Other typical examples of violations encountered on the Mexican border are set forth in the same volume in the consolidated cases of the *United States v. 8 automobiles*, *United States v. 2 automobiles*, and *United States v. 4 automobiles*, 53 Fed. Supp. 775, and in *United States v. 7 cartons of wearing apparel*, 53 Fed. Supp. 777.

Under these circumstances forfeiture of the goods which are seized at the time of discovery is frequently ineffectual to punish those really responsible. Frequently they either cannot be apprehended or proof of their complicity is difficult. We conclude therefore the policy of forfeiture of the vehicles containing the illegal merchandise is neither unnecessary or unreasonable and that Congress properly intended such forfeiture.

and for the claimants in said Civil Action, and that such stipulation may be filed in said action in the trial of this cause by either party.

“In addition, the evidence shows :

“(b) That there was an understanding or agreement between Rafael Ramirez, the owner of the truck, and Fortunato Ramirez, the owner of the dresses, that the dresses would be transported from Laredo, Texas, to the home of Fortunato Ramirez or Rafael Ramirez, or other suitable place, in Texas, but near the border (Rio Grande) between the United States and Mexico, and then smuggled into Mexico, i. e., taken out of the United States without declaring same and without a license or other permit and in violation of the Laws and Executive Regulations of the United States.

“Also it was shown that at the time the dresses were seized, they were in such truck and Fortunato Ramirez and Rafael Ramirez were then and there attempting to carry out, and in the act of carrying out, such arrangement and agreement.” *United States v. 251 Ladies Dresses*, 53 Fed. Supp. 772-3.

CONCLUSION

The District Court erred in holding that Title VI of the Espionage Act of 1917 does not authorize forfeiture of a vehicle containing articles about to be unlawfully exported and in ordering restoration of the Plymouth truck under seizure herein to claimant; and the court's judgment restoring the vehicle to claimant should be reversed with appropriate provisions for its forfeiture to the United States.

FRANK E. FLYNN,

United States Attorney,

JOHN P. DOUGHERTY,

Assistant United States Attorney.

ALLAN B. LUTZ,

Attorney, Department of Justice.

Proctors for the United States.

APPENDIX A

APPLICATION FOR WARRANT FOR FURTHER DETENTION

In the District Court of the United States for the District of Arizona

No. Civil—245—Tucson

UNITED STATES OF AMERICA, LIBELANT

v.

7 BOXES LEMONS, 307 LBS. GROSS, 2 BOXES GRAPEFRUIT, 92 LBS. GROSS, 10 CASES CANNED MILK, 48 CANS EA., 14½ OZ. NET WEIGHT EACH, "PET" AND "CARNATION" BRANDS, AND ONE TRUCK, 1940 PICK-UP, MOTOR NO. T-105-2887, PLYMOUTH MODEL PT105, SR. 9209823, RESPONDENTS

AFFIDAVIT FOR WARRANT OF DETENTION OF SEIZED PROPERTY

[FILED JUNE 7, 1944]

UNITED STATES OF AMERICA,

District of Arizona:

William H. Shane, being first duly sworn, deposes and says: That he is a Customs Inspector stationed at Nogales, Arizona; that he was so engaged on June 3, 1944; that since that day he has been on duty in such official capacity at Nogales, Arizona; that on June 3, 1944, Roberto Sanchez Cuevas and Alfredo

Grijalva, truck drivers for Miguel Morachis of Nogales, Arizona, arrived at the Customs Inspection Station and presented two export declarations to support the exportation of three crates, 210 pounds, celery, two boxes, 70 pounds, sweet potatoes, twenty boxes, 540 pounds bread, and ten boxes, 480 pounds, of apples. A license from the Board of Economic Warfare was required for the apples, which they presented. Upon examination of the load of merchandise Inspector William H. Shane found that the boxes labeled apples contained grapefruit and lemons; further examination of the load disclosed that five of the twenty boxes labeled bread, contained canned milk, Carnation and Pet Brands. The truck drivers admitted that it was a deliberate attempt to smuggle the merchandise and that they had been so instructed by their immediate superior, Rudolfo Tapia Montano, shipping clerk and secretary for Miguel Morachis. Rudolfo Tapia Montano stated that they had endeavored to smuggle the fruit and canned milk because they had no license to export same; that on June 3, 1944, the truck, grapefruit, lemons, and the canned milk were seized, detained, and remain in the custody of the Collector of Customs, United States Customs District No. 26, Nogales, Arizona, because said merchandise was being exported in said truck in violation of the Export Control Regulations and as provided in Section 401, Title 22, U. S. C. A., pursuant to order of the Foreign Economic Administration, dated Jan-

uary 10, 1944, issued under the act of July 2, 1940, as amended June 30, 1942, 50 U. S. C. 701.

W. H. SHANE.

Subscribed and sworn to before me this 6th day of June 1944.

E. K. CUMMING.

[Seal of
E. K. CUMMING,
United States
Commissioner,
District of Arizona]

WARRANT FOR FURTHER DETENTION

In the District Court of the United States for the
District of Arizona

No. Civil-245-Tucson

UNITED STATES OF AMERICA, LIBELANT

v.

7 BOXES LEMONS, 307 LBS. GROSS; 2 BOXES GRAPEFRUIT, 92 LBS. GROSS; 10 CASES CANNED MILK, 48 CANS EA., 14½ OZ. NET WEIGHT EACH, "PET" AND "CARNATION" BRANDS; AND ONE TRUCK, 1940 PICK-UP, MOTOR No. T-105-2887, PLYMOUTH MODEL PT105, SR. 9209823, RESPONDENTS

WARRANT FOR DETENTION OF SEIZED PROPERTY

Whereas, an Affidavit having been filed alleging that the above-named articles in the title hereof were seized by William H. Shane, Customs Inspector at Nogales, Arizona, and that said articles were being, and intended to be exported, shipped from and taken out of the United States of America and into the Re-

public of Mexico in violation of law, and without obtaining the necessary license to export the same, and

Whereas, a motion has been made by the United States District Attorney for the District of Arizona for the issuance of a warrant upon said Affidavit,

NOW, THEREFORE, I ALBERT M. SAMES, Judge of the District Court of the United States for the District of Arizona, by this my warrant, authorize and empower that said articles above-described be detained by said seizing officer until the President of the United States orders the same to be restored to the owner or claimant, or until the same are discharged in due course of law on petition of the claimant or on trial of condemnation proceedings as provided in 22 USCA 401-408.

Given under my hand this 7th day of June 1944.

ALBERT M. SAMES,
*Judge, U. S. District Court for
the District of Arizona.*

LIBEL

In the District Court of the United States for the
District of Arizona

No. Civil-245-Tucson

UNITED STATES OF AMERICA, LIBELANT

v.

SEVEN BOXES LEMONS, 307 LBS. GROSS; 2 BOXES GRAPE-FRUIT, 92 LBS. GROSS; 10 CASES CANNED MILK, 48 CANS EA., 14½ OZ. NET WEIGHT EACH "PET" AND "CARNATION" BRANDS, AND ONE TRUCK, 1940 PICKUP, MOTOR NO. T-105-2887, PLYMOUTH MODEL PT105, SR. 9209823, RESPONDENTS

INFORMATION OF LIBEL

(For the forfeiture and condemnation of goods sought to be exported in viol. 50 U. S. C. 701, U. S. A. a party, Federal question.)

(Filed 6-10-44)

To the Honorable ALBERT M. SAMES, *Judge of the said court:*

Now comes the United States of America by Assistant United States Attorney John P. Dougherty, its attorney, and alleges on information and belief as follows:

I

That on or about the 3rd day of June 1944, at the Port of Nogales, Arizona, 7 boxes Lemons, 307 lbs. gross; 2 boxes Grapefruit, 92 lbs. gross; 10 cases Canned Milk, 48 cans ea., 14½ oz. net weight each "Pet" and "Carnation" brands, and One Truck, 1940 Pickup, Motor No. T-105-2887, Plymouth Model PT105, Sr. 9209823, were attempted to be exported or shipped from, or taken out of the United States of America in violation of law, and with the intention that said articles be exported, or shipped from, or taken out of the United States of America, in violation of law.

II

That the said articles were not manifested, and no export license for the said articles was presented to the Collector of Customs.

III

The exportation of said articles are prohibited by the provisions of 50 U. S. C. 701, and Proclamations, Executive Orders and Regulations issued pursuant to said statute and supplements and amendments thereto.

IV

No export license had been issued for the exportation of said articles although licenses for the exportation of the same are required by the aforesaid Statutes, Proclamations, Executive Orders and Regulations.

V

That on or about the 3rd day of June 1944, the Collector of Customs at Nogales, Arizona, pursuant to the authority of 22 U. S. C. 238 and 402, seized and detained the said articles and retained and still retains possession thereof for further disposition as may be provided by law.

VI

That thereafter, with due diligence and on or about the 7th day of June 1944, said Collector of Customs applied to the Honorable Judge of the United States District Court for the District of Arizona, under 22 U. S. C. 239 and 402, for a warrant to justify the further detention of such property; and on the 7th day of June, 1944, the said Judge, having been satisfied that the seizure was justified, issued his warrant accordingly, pursuant to the authority of 22 U. S. C. 239 and 402, and the said property has since been detained by said Collector for disposition according to law.

VII

That more than thirty days have passed since the seizure of said articles, and no owner or claimant has filed a petition for restoration of the whole or any part thereof.

VIII

That the Attorney General of the United States has directed the United States Attorney for this District to institute a libel proceeding in this Court against said articles, to forfeit and condemn said articles to the United States of America, pursuant to 22 USCA 241 and 404.

IX

That by reason of the premises and the same being contrary to the form of the statute or statutes of the United States in such cases provided, and the Proclamations, Executive Orders and Regulations issued by authority of law, the said articles became and are forfeited to the United States of America.

Wherefore, libelant prays that process in due form of law be issued to enforce said forfeiture and condemnation against the aforesaid articles citing all persons having or claiming any interest in the said articles to appear upon the return day and show cause why the condemnation and forfeiture should not be decreed; and that the aforesaid articles be condemned and forfeited to the United States of America and be ordered disposed of as provided by

law and that the libelant have such other and further relief in the premises as the Court shall deem just.

F. E. FLYNN

United States Attorney,

JOHN P. DOUGHERTY,

Assistant U. S. Attorney,

Attorney for Libellant,

412 Federal Building, Tucson, Arizona.

UNITED STATES OF AMERICA,

District of Arizona, ss:

John P. Dougherty, being first duly sworn, deposes and says that he is an Assistant United States Attorney for the District of Arizona; that he has read the foregoing libel of information and knows the contents thereof, and that he believes the same to be true in substance and in fact.

JOHN P. DOUGHERTY.

Subscribed and sworn to before me this 10th day of June 1944.

JEAN E. MICHAEL,

Deputy Clerk, U. S. District Court

for the District of Arizona.

APPENDIX B

NEUTRALITY ACT OF 1935—EXCERPT

On the 31st day of August 1935 there was approved Senate Joint Resolution No. 173, Chapter 837, 74th Congress, 1st Session, 49 Stat. 1081, providing for the prohibition of the export of arms, ammunition, and implements of war to belligerent countries, etc. Section 1 of that resolution provided in part as follows:

[Chapter 837]

JOINT RESOLUTION

Providing for the prohibition of the export of arms, ammunition, and implements of war to belligerent countries; the prohibition of the transportation of arms, ammunition, and implements of war by vessels of the United States for the use of belligerent states; for the registration and licensing of persons engaged in the business of manufacturing, exporting, or importing arms, ammunition, or implements of war; and restricting travel by American citizens on belligerent ships during war.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That upon the outbreak or during the progress of war between, or among, two or more foreign states, the President shall proclaim such fact, and it shall thereafter be unlawful to export arms, ammunition, or implements of war from any place in the

United States, or possessions of the United States to any port of such belligerent states, or to any neutral port for transshipment to, or for the use of, a belligerent country.

The President, by proclamation, shall definitely enumerate the arms, ammunition, or implements of war, the export of which is prohibited by this Act.

The President may, from time to time, by proclamation, extend such embargo upon the export of arms, ammunition, or implements of war to other states as and when they may become involved in such war.

Whoever, in violation of any of the provisions of this section, shall export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from the United States, or any of its possessions, shall be fined not more than \$10,000 or imprisoned not more than five years, or both, and the property, vessel, or vehicle containing the same shall be subject to the provisions of sections 1 to 8 inclusive, title 6, chapter 30, of the Act approved June 15, 1917 (40 Stat. 223-225; U. S. C., title 22, secs. 238-245).

In the case of the forfeiture of any arms, ammunition, or implements of war by reason of a violation of this Act, no public or private sale shall be required; but such arms, ammunition, or implements of war shall be delivered to the Secretary of War for such use or disposal thereof as shall be approved by the President of the United States.

When in the judgment of the President the conditions which have caused him to issue his proclamation have ceased to exist he shall revoke the same and the provisions hereof shall thereupon cease to apply.

Except with respect to prosecutions committed or forfeitures incurred prior to March 1, 1936, this section and all proclamations issued

thereunder shall not be effective after February 29, 1936.

* * * * *

(49 Stat. 1081—repealed by Act of Nov. 4, 1939, Chapter 2, Section 9, 54 Stat. 12.)

NEUTRALITY ACT OF 1937—EXCERPT

On May 1, 1937, there was approved Senate Joint Resolution 146, 75th Congress, 1st Session, Chapter 146, 50 Stat. 121, which provided in part as follows:

[Chapter 146]

JOINT RESOLUTION

To amend the joint resolution entitled “Joint resolution providing for the prohibition of the export of arms, ammunition, and implements of war to belligerent countries; the prohibition of the transportation of arms, ammunition, and implements of war by vessels of the United State for the use of belligerent states; for the registration and licensing of persons engaged in the business of manufacturing, exporting, or importing arms, ammunition, or implements of war; and restricting travel by American citizens on belligerent ships during war”, approved August 31, 1935, as amended.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the joint resolution entitled “Joint resolution providing for the prohibition of the export of arms, ammunition, and implements of war to belligerent countries; the prohibition of the transportation of arms, ammunition, and implements of war by vessels of the United States for the use of belligerent states; for the registration and licensing of persons engaged in the business of manufacturing,

exporting, or importing arms, ammunition, or implements of war; and restricting travel by American citizens on belligerent ships during war", approved August 31, 1935, as amended, is amended to read as follows:

"EXPORT OF ARMS, AMMUNITION, AND IMPLEMENTS OF WAR

"SECTION 1. (a) Whenever the President shall find that there exists a state of war between, or among, two or more foreign states, the President shall proclaim such fact, and it shall thereafter be unlawful to export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from any place in the United States to any belligerent state named in such proclamation, or to any neutral state for transshipment to, or for the use of, any such belligerent state.

"(b) The President shall, from time to time, by proclamation, extend such embargo upon the export of arms, ammunition, or implements of war to other states as and when they may become involved in such war.

"(c) Whenever the President shall find that a state of civil strife exists in a foreign state and that such civil strife is of a magnitude or is being conducted under such conditions that the export of arms, ammunition, or implements of war from the United States to such foreign state would threaten or endanger the peace of the United States, the President shall proclaim such fact, and it shall thereafter be unlawful to export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from any place in the United States to such foreign state, or to any neutral state for transshipment to, or for the use of, such foreign state.

"(d) The President shall from time to time by proclamation, definitely enumerate the arms,

ammunition, and implements of war, the export of which is prohibited by this section. The arms, ammunition, and implements of war so enumerated shall include those enumerated in the President's proclamation Numbered 2163, of April 10, 1936, but shall not include raw materials or any other articles or materials not of the same general character as those enumerated in the said proclamation, and in the Convention for the Supervision of the International Trade in Arms and Ammunition and in Implements of War, signed at Geneva June 17, 1925.

“(e) Whoever, in violation of any of the provisions of this Act shall export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from the United States shall be fined not more than \$10,000, or imprisoned not more than five years or both, and the property, vessel, or vehicle containing the same shall be subject to the provisions of sections 1 to 8, inclusive, title 6, chapter 30, of the Act approved June 15, 1917 (40 Stat. 223-225; U. S. C. 1934 ed., title 22, secs. 238-245).

“(f) In the case of the forfeiture of any arms, ammunition, or implements of war by reason of a violation of this Act, no public or private sale shall be required; but such arms, ammunition, or implements of war shall be delivered to the Secretary of War for such use or disposal thereof as shall be approved by the President of the United States.

“(g) Whenever, in the judgment of the President, the conditions which have caused him to issue any proclamation under the authority of this section shall thereupon cease to apply with respect to the state or states named in such proclamation, except with respect to offenses committed, or forfeitures incurred, prior to such revocation.”

(50 Stat. 121—repealed by Act of Nov. 4, 1939, Chapter 2, Section 9, 54 Stat. 12.)

APPENDIX C

In the District Court of the United States for the
District of Arizona

Decree: Case No. T-145

UNITED STATES OF AMERICA

v.

ONE VIM AUTO-TRUCK, BEARING ARIZONA 1918
LICENSE No. 13919

On this day here again comes C. R. McFall, Assistant United States Attorney for the said United States, and also comes A. A. Worsley, Esquire, Attorney for the claimant of the above mentioned property; and it appearing to the Court that a motion for decree upon the pleadings has been heretofore filed in this case on behalf of the United States and same has been set for hearing on this day; and the Court having considered the said motion of the said United States Attorney, for the said United States, for decree upon pleadings filed herein, and having heard arguments of both said Assistant United States Attorney and A. A. Worsley, Esquire, attorney for claimants herein, and being now fully advised concerning the same, allows the same, and orders that a decree of forfeiture be entered in this case, as prayed for in the Information filed herein.

It is, therefore, ordered, adjudged and decreed that the property heretofore seized by the Collector of Customs for the District of Arizona, as described in

said information, to-wit, One Vim auto-truck, bearing Arizona license No. 13919, be and the same is hereby condemned and forfeited to the United States for the reason and causes set forth in said Information, and the said property is hereby adjudged and decreed to be the property of the United States of America.

And it is further ordered, adjudged and decreed that said property be sold by the United States Marshal for the District of Arizona at public auction to the highest bidder for cash, at some suitable public place in the City of Nogales, in said District, to be selected by said Marshal and that said Marshal give notice of such sale as is provided by law and that place of sale, together with the day and hour thereof, to be particularly specified in said notice.

And it is further ordered, adjudged and decreed that said Marshal do pay over the proceeds of said sale, after deducting such costs and expenses as may be authorized by law, to the Clerk of this Court.

And it is further ordered, adjudged and decreed that all proper process do issue out of and under the seal of this Court by the Clerk of this Court, directed to said Marshal, commanding him to make sale of said property and disposition of the proceeds thereof, as herein adjudged.

Done in open court this 27th day of January 1919.

WM. H. SAWTELLE,
United States District Judge.

Endorsed:

Filed Jan. 27, 1919.

MOSE DRACHMAN, *Clerk.*

Copy

In the District Court of the United States for the
District of Arizona

UNITED STATES OF AMERICA

v.

ONE VIM AUTO-TRUCK, BEARING ARIZONA 1918 LICENSE
No. 13919

WARRANT FOR DETENTION OF PROPERTY SEIZED FOR VIOLA-
TION OF ACT OF JUNE 15, 1917, AND ACT OF MARCH 3,
1893

Upon the Petition of George B. Mason, Special Deputy Collector of Customs for the Port of Nogales, District of Arizona, duly verified and heretofore filed in this matter, and being satisfied that the seizure made as set out in said Petition was and is justified under the provisions of Title 6 of the Act of Congress approved June 15, 1917, and entitled, "An Act To punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes;"

IT IS HEREBY ORDERED, That the property so seized and described in said Petition, to-wit, One Vim Auto-truck, bearing Arizona 1918 license number 13919, shall be detained by the person making such seizure, as set out in said Petition, to-wit, George B. Mason, Special Deputy Collector of Customs for the Port of Nogales, Arizona, until the President of the United States orders said property to be restored to the owner or claimant thereof, or until it is discharged in due course of law, or is otherwise disposed of on

trial of condemnation proceedings, if the same shall hereafter be brought.

Dated at Tucson, Arizona, this 4th day of April A. D. 1918.

*Judge, District Court of the United States
 for the District of Arizona.*

In the District Court of the United States for the
 District of Arizona

UNITED STATES OF AMERICA

v.

ONE VIM AUTO-TRUCK, BEARING ARIZONA 1918 LICENSE
 No. 13919

PETITION

To the Honorable WILLIAM H. SAWTELLE, *Judge of the
 District Court of the United States for the Dis-
 trict of Arizona:*

Comes now your Petitioner, Geo. B. Mason, Special Deputy Collector of Customs for the Port of Douglas, District of Arizona, and respectfully shows to Your Honor, as follows:

That on the 27th day of March A. D. 1918, at the Port of Nogales, in the District of Arizona, your Petitioner did seize and take into possession the following described property, to-wit: One Vim Auto-truck, bearing Arizona 1918 license number 13919;

That your Petitioner has probable cause to believe that the above described property, seized as aforesaid, contained certain merchandise, to-wit, four hundred eighty cans of milk, which said merchandise was being exported and shipped from, and taken out, and

intended to be exported and shipped from and taken out of the United States, to and into the Republic of Mexico, in violation of law, that is to say:

That on the 27th day of March A. D. 1918, said merchandise, to-wit, four hundred eighty cans of milk, was being exported and shipped from and taken out, and was intended to be exported and shipped from and taken out of the United States, through the said Port of Nogales, into the Republic of Mexico, without license or permit from the War Trade Board, in violation of the Act of Congress approved June 15, 1917, and the Proclamation of the President of the United States dated February 14, 1917, promulgated under and by authority of said Act;

That the said merchandise was contained and transported in and by the said property so seized, to-wit, One Vim Auto-Truck, bearing Arizona 1918 license number 13919, and the the said Auto-Truck was, on the aforesaid date, used by one Alberto Martinez, or some other person, as a vehicle to contain and transport, and export and ship from and take out, and to attempt to export and ship from and take out of the United States, through the said Port of Nogales, to and into the Republic of Mexico, the aforesaid merchandise, without license or permission so to do from the War Trade Board, in violation of the aforesaid Act of Congress and the said Proclamation of the President promulgated under and by authority thereof.

And your Petitioner further states that the said merchandise, to-wit, the said four hundred eighty cans of milk, so contained and transported in and by the said auto-truck, was being transported, shipped from and taken out of the United States, to and into the Republic of Mexico, through the said Port of Nogales, Arizona, by the aforesaid Alberto Martinez,

without the said Alberto Martinez delivering to the customs officer at said Port of Nogales, Arizona, a manifest thereof, as required by the Act of March 3, 1893.

Wherefore, your Petitioner prays that the said property, to-wit—One Vim Auto-Truck, bearing Arizona 1918 License number 13919, so seized as aforesaid, may be detained by your Petitioner until the President of the United States orders it to be restored to the owner or claimant thereof, or until it is discharged in due course of law, or otherwise disposed of on trial of condemnation proceedings, if the same shall hereafter be brought, and for such other order as may be necessary and proper in the premises.

Dated at Tucson, Arizona, this 3d day of April A. D. 1918.

GEO. B. MASON,
Petitioner.

UNITED STATES OF AMERICA,
District of Arizona, ss.

George B. Mason, Special Deputy Collector of Customs for the Port of Nogales, District of Arizona, being first duly sworn, says that he has read the above Petition and knows the contents thereof, and that the same is true, according to the best of his knowledge and belief.

[SEAL]

GEO. B. MASON.

Subscribed and sworn to before me this 3rd day of April A. D. 1918.

EFFIE D. BOTTS,
Deputy Clerk, U. S. District Court.

Endorsed:

LAW. No. 133 TUCSON

In the District Court of the United States for the
----- of Arizona

v.

ONE VIM-AUTO-TRUCK

Petition filed April 3rd, 1918.

MOSE DRACHMAN, *Clerk.*
By EFFIE D. BOTTS, *Deputy.*

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF ARIZONA

MAY TERM, A. D. 1918

UNITED STATES OF AMERICA

v.

ONE VIM-AUTO-TRUCK BEARING ARIZONA 1918
LICENSE No. 13919

INFORMATION

Be it remembered, That Thomas A. Flynn, United States Attorney for the District of Arizona, who for the said United States in this behalf prosecutes, comes by John H. Martin, Assistant United States Attorney, into the District Court of the United States for the District of Arizona, on this the 26th day of June A. D. 1918, and for the said United States gives the Court here to understand and be informed that on the 27th day of March 1918, on land, at the Port of Nogales,

in the collection and judicial District of Arizona, Charles E. Hardy, then and there the Collector of Customs for the District of Arizona, did seize certain property, that is to say:—

One Vim Auto-Truck, bearing Arizona License No. 13919, of the estimated value of Five Hundred Dollars money of the United States of America.

That the said Charles E. Hardy, Collector of Customs as aforesaid, now holds the said property in his custody for the causes following, to wit:

(1) That prior to said seizure, to wit, on the 27th day of March 1918, one Harry Left did fraudulently and knowingly attempt to export, ship from, and take out of the United States of America, to and into the United States of Mexico, certain merchandise, to-wit, four hundred and eighty cans of milk, and which said four hundred and eighty cans of milk was being exported, shipped from, and taken out of, and intended to be exported, shipped from and taken out of the United States of America to and into the United States of Mexico, contrary to law; that is to say, without license or permit from the War Trade Board as provided for by an Act of Congress approved June 15, 1917, entitled "An Act to punish acts of interference with the foreign relations, the neutrality and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes" and the Proclamation of the President of the United States dated February 14, 1918, promulgated under and by authority of said Act.

(2) And for that the said merchandise, to wit, the said four hundred and eighty cans of milk was contained and transported in and by the property so seized, to wit, One Vim Auto-Truck, bearing Arizona

License, number 13919, and that the said Auto-Truck was on the aforesaid date used by the said Harry Left, or some other person, as a vehicle to contain and transport, and export, ship from, and take out of, and in attempting to export, ship from and take out of the United States, through the said Port of Nogales, to and into the United States of Mexico the aforesaid merchandise without license or permission so to do from the War Trade Board, in violation of the aforesaid Act of Congress, and the said Proclamation of the President, promulgated under and by authority thereof.

(3) And for that the said merchandise, to wit, the said four hundred and eighty cans of milk, so contained and transported in and by the said Auto-Truck was being transported, shipped from and taken out of the United States to and into the United States of Mexico, without the said Harry Left or any other person delivering to the Customs Officer at said Port of Nogales, Arizona, a manifest thereof, as required by the act of March 3, 1893, contrary to the form of the statute in such case made and provided.

By reason of which said premises, and by force of the statutes and Proclamation aforesaid, the said property, to wit, One Vim Auto-Truck, bearing Arizona 1918 License Number 13919 became and is forfeited to the United States.

WHEREFORE, the said United States Attorney, who prosecutes as aforesaid, for the said United States, prays that the said property, to wit, the said Vim Auto-Truck, bearing Arizona 1918 License number 13919, be forfeited to the United States, and that due process of law may be awarded in this behalf to enforce such forfeiture of the said property so seized as aforesaid, and to give notice to all persons concerned

to appear on the return day of such process, and show cause, if any they have, why such forfeiture should not be adjudged.

THOMAS A. FLYNN,
*United States Attorney for the
District of Arizona.*

JOHN H. MARTIN,
Assistant United States Attorney.

Endorsed:

Filed June 26, 1918.

MOSE DRACHMAN, *Clerk.*